

## § 20.34

## 21 CFR Ch. I (4–1–11 Edition)

### § 20.34 Search for records.

(a) In responding to a request for records, the Food and Drug Administration shall make reasonable efforts to search for records kept in electronic form or format, except when such efforts would significantly interfere with the operation of the agency's automated information systems.

(b) The term “search” means to review, manually or by automated means, agency records for the purpose of locating those records that are responsive to the request.

[68 FR 25285, May 12, 2003]

## Subpart C—Procedures and Fees

### § 20.40 Filing a request for records.

(a) All requests for Food and Drug Administration records shall be made in writing by mailing or delivering the request to the Freedom of Information Staff (HFI-35), Food and Drug Administration, rm. 12A-16, 5600 Fishers Lane, Rockville, MD 20857, or by faxing it to 301-443-1726. All requests must contain the postal address and telephone number of the requester and the name of the person responsible for payment of any fees that may be charged.

(b) A request for Food and Drug Administration records shall reasonably describe the records being sought, in a way that they can be identified and located. A request should include all pertinent details that will help identify the records sought.

(1) If the description is insufficient to locate the records requested, the Food and Drug Administration will so notify the person making the request and indicate the additional information needed to identify the records requested.

(2) Every reasonable effort shall be made by the Food and Drug Administration to assist in the identification and location of the records sought.

(c) Upon receipt of a request for records, the Freedom of Information Staff shall enter it in a public log. The log shall state the date received, the name of the person making the request, the nature of the record requested, the action taken on the request, the date of determination letter sent pursuant to § 20.41(b), and the

date(s) any records are subsequently furnished.

(d) A request by an individual, as defined in § 21.3(a) of this chapter, for a record about himself shall be subject to:

(1) The special requirements of part 21 of this chapter (the privacy regulations), and not to the provisions of this subpart, if the record requested is retrieved by the individual's name or other personal identifier and is contained in a Privacy Act Record System, as defined in § 21.3(c) of this chapter.

(2) The provisions of this subpart if the record requested is not retrieved by the individual's name or other personal identifier, whether or not the record is contained in a Privacy Act Record System.

[42 FR 15616, Mar. 22, 1977, as amended at 46 FR 8456, Jan. 27, 1981; 68 FR 25285, May 12, 2003]

### § 20.41 Time limitations.

(a) All time limitations prescribed pursuant to this section shall begin as of the time at which a request for records is logged in by the Freedom of Information Staff pursuant to § 20.40(c). An oral request for records shall not begin any time requirement. A written request for records sent elsewhere within the agency shall not begin any time requirement until it is redirected to the Freedom of Information Staff and is logged in there in accordance with § 20.40(c).

(b) Within 20 working days (excluding Saturdays, Sundays, and legal public holidays) after a request for records is logged in at the Freedom of Information Staff, the agency shall send a letter to the requester providing the agency's determination as to whether, or the extent to which, the agency will comply with the request, and, if any records are denied, the reasons for the denial.

(1) If all of the records requested have been located and a final determination has been made with respect to disclosure of all of the records requested, the letter shall so state.

(2) If all of the records have not been located or a final determination has not yet been made with respect to disclosure of all of the records requested,

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e.g., because it is necessary to consult the person affected pursuant to § 20.47, the letter shall state the extent to which the records involved shall be disclosed pursuant to the rules established in this part.

(3)(i) In unusual circumstances, the agency may extend the time for sending the letter for an additional period.

(A) The agency may provide for an extension of up to 10 working days by providing written notice to the requester setting out the reasons for the extension and the date by which a determination is expected to be sent.

(B) The agency may provide for an extension of more than 10 working days by providing written notice to the requester setting out the reasons for the extension. The notice also will give the requester an opportunity to limit the scope of the request so that it may be processed in a shorter time and/or an opportunity to agree on a timeframe longer than the 10 extra working days for processing the request.

(ii) Unusual circumstances may exist under any of the following conditions:

(A) There is a need to search for and collect the requested records from field facilities or other components that are separate from the agency component responsible for processing the request;

(B) There is a need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request; or

(C) There is need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request, or among two or more components of the Food and Drug Administration having substantial subject-matter interest in the determination.

(4) If any record is denied, the letter shall state the right of the person requesting such records to appeal any adverse determination to the Assistant Secretary for Health, Department of Health and Human Services, in accordance with the provisions of 45 CFR 5.34.

(c) The Food and Drug Administration shall provide a determination of whether to provide expedited processing within 10 calendar days of receipt by the Freedom of Information

Staff of the request and the required documentation of compelling need in accordance with § 20.44(b).

[42 FR 15616, Mar. 22, 1977, as amended at 46 FR 8456, Jan. 27, 1981; 55 FR 1405, Jan. 16, 1990; 59 FR 533, Jan. 5, 1994; 68 FR 25285, May 12, 2003]

### § 20.42 Aggregation of certain requests.

The Food and Drug Administration may aggregate certain requests by the same requester, or by a group of requesters acting in concert, if the requests involve clearly related matters and the agency reasonably believes that such requests actually constitute a single request which would otherwise satisfy the unusual circumstances specified in § 20.41(b)(3)(ii)(B). FDA may extend the time for processing aggregated requests in accordance with the unusual circumstances provisions of § 20.41.

[68 FR 25286, May 12, 2003]

### § 20.43 Multitrack processing.

(a) Each Food and Drug Administration component is responsible for determining whether to use a multitrack system to process requests for records maintained by that component. A multitrack system provides two or more tracks for processing requests, based on the amount of work and/or time required for a request to be processed. The availability of multitrack processing does not affect expedited processing in accordance with § 20.44.

(b) If multitrack processing is not adopted by a particular agency component, that component will process all requests in a single track, ordinarily on a first-in, first-out basis.

(c) If a multitrack processing system is established by a particular agency component, that component may determine how many tracks to establish and the specific criteria for assigning requests to each track. Multiple tracks may be established for requests based on the amount of work and/or time required for a request to be processed.

(d) Requests assigned to a given track will ordinarily be processed on a first-in, first-out basis within that track.